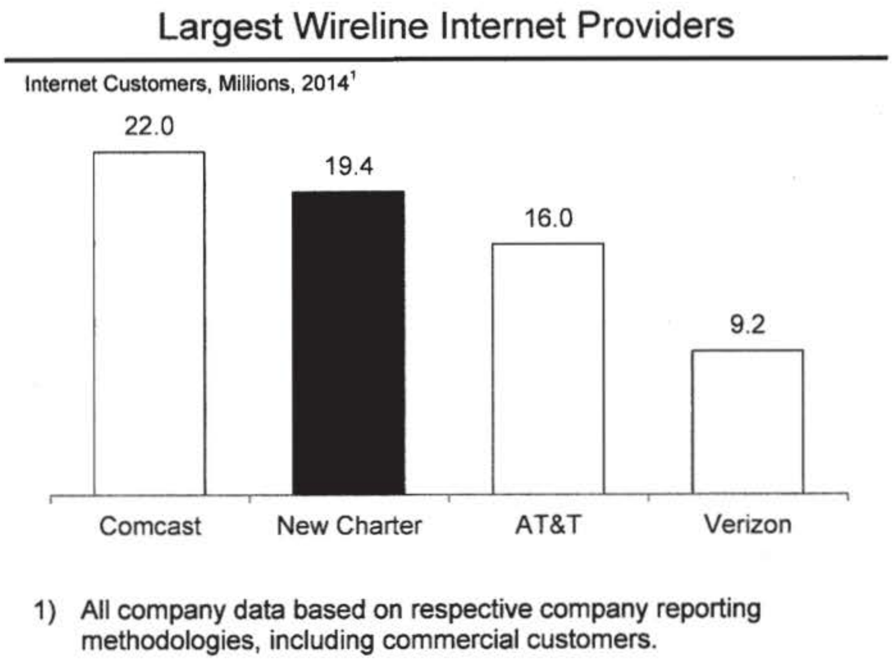
clearly exists, as noted above. Even when looking at national broadband provision as a whole, New Charter will still be the number two broadband provider behind Comcast, and AT&T and Verizon will also be major providers, as the chart below indicates. Thus, competition further ensures that there is—and will be—no ability to foreclose.



There also is no reason for concern about national aggregation of broadband because New Charter (just as Applicants today) will have no gatekeeping role with respect to the online content we make available to consumers. Content owners and other edge providers have the ability to reach all broadband subscribers directly over the Internet, in contrast to the need for pay-TV programmers to secure carriage deals with MVPDs to reach their video subscribers. Any concerns about a video distributor's purchasing power over video programming, therefore, are inapplicable to a broadband provider's role in distributing content. Disadvantaging edge provider traffic is also expressly prohibited under the Commission's Open Internet rules,[113] and

113 *See* 47 C.F.R. § 8.5 *et seq.*

we have made clear New Charter's willingness to abide by those rules irrespective of the outcome of pending appeals. The factors that theoretically provide an MVPD market power in the programming purchasing market at some high level of subscribers, therefore, simply are not applicable.

In any event, even using the restrictive 25/3+ Mbps standard the Commission has adopted to define advanced telecommunications capability under Section 706,[114] New Charter would serve fewer than 30% of national broadband customers and a smaller number than Comcast serves today.[115] Therefore, even assuming (counterfactually) that Internet Service Providers ("ISPs") may have an incentive to impede OVDs, such a percentage falls far short of the level of aggregation that would be required to preclude the profitable operation of an OVD, as opponents to the Comcast-Time Warner Cable transaction themselves made clear. Their own economists acknowledged that, absent a combination with Time Warner Cable, Comcast's control of over 50% of 25/3+ customers did not enable Comcast to engage in a foreclosure strategy.[116] New Charter consequently could not conceivably foreclose with fewer than 30% of such customers.[117]

In any event, any effort to foreclose OVDs would be directly contrary to our clear economic interest in expanding subscribership to our broadband network. Such efforts would

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114 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1403-08 ¶¶ 45-56 (2015) ("*2015 Broadband Progress Report*").

115 *See* discussion *supra* note 10.

116 *Applications of Comcast Corp., Time Warner Cable Inc., Charter Commc'ns, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Petition to Deny of DISH Network Corp., Exh. B (Decl. of Professor David Sappington), MB Docket No. 14-57, ¶ 20 (Aug. 25, 2014) ("*DISH Petition to Deny:* Sappington Declaration") (noting Comcast-Time Warner Cable would have controlled 49.9% of 25M broadband connections in the country); *id.* ¶ 48 ("Unlike Comcast and [Time Warner Cable] individually, the combined entity may have the potential to preclude the profitable operation of an OVD.").

117 Dr. Scott Morton Decl. ¶ 34.

only harm New Charter's broadband business, damaging New Charter's reputation and resulting in the loss of subscribers.[118] As Dr. Scott Morton explains, New Charter will have every incentive to maximize the number of consumers with access to hyper-fast broadband, thus expanding the population for new data-intensive services, especially streaming video.[119] This will continue a virtuous cycle that is already present. As innovators see a larger base population with access to faster broadband, they will be more likely to develop data intensive applications. Other ISPs will continue to be driven by consumer demand to increase their base speeds as well.

Nor will our position in the top DMAs allow us to foreclose OVDs if that were our goal. New Charter will be the largest MVPD in only 4 of the top 20 DMAs—the same ones in which Time Warner Cable and Bright House Networks already have the largest presence.[120] Thus, if an OVD or other broadband distributor is seeking to launch a product or negotiate an advertising arrangement, Charter would not have the ability to foreclose it from doing so. And, as a practical matter, we could not withhold programming content from OVDs to increase the attractiveness of our own video services.[121] We will not have national programming and thus will lack the ability to harm OVDs by withholding or increasing costs for our programming. Thus, New Charter will have only limited impact on top DMAs—and less impact than other current players.

Finally, New Charter's customer practices provide further protection against any mistreatment of OVDs or other edge providers. New Charter's consumers will have none of the

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[118] Dr. Scott Morton Decl. ¶¶ 52-56.

[119] *See* Dr. Scott Morton Decl. ¶¶ 57-60.

[120] Based on analysis of SNL Kagan data. The DMAs are Los Angeles, Tampa-St. Petersburg, Orlando-Daytona-Melbourne, and Cleveland-Akron/Canton. New Charter will remain the leader in these DMAs even if AT&T-DirecTV successfully merge.

[121] *Applications of Comcast Corp., Time Warner Cable Inc., Charter Commc'ns, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Petition to Deny of DISH Network Corp., MB Docket No. 14-57, at 63, 80-81 (Aug. 25, 2014); *see also Comcast-NBCU Order*, 26 FCC Rcd at 4251 ¶ 30 ("Some commenters express concern that Comcast-NBCU would foreclose video programming distributors that compete with Comcast from access to joint venture programming.").

early termination fees or long-term lock-in provisions seen elsewhere in the industry,[122] making it easy for customers unhappy with the treatment of edge content to switch providers.[123] New Charter's commitment to abide by the *Open Internet Order*'s prohibitions on blocking, throttling, and paid prioritization[124] further ensures that we will have no ability to harm OVDs in the future. And none of the Applicants has any history of engaging in anticompetitive actions with respect to edge providers. To the contrary, opponents to the Comcast-Time Warner Cable merger have praised Time Warner Cable's leadership in collaborating with programmers and third-party device developers on app development, TV Everywhere authentication, and related initiatives.[125] Upon the completion of the Transaction, New Charter will follow that path.

b. New Charter's Incentive Will Be To Promote OVDs.

New Charter also has no *incentive* to harm OVDs. Dr. Scott Morton confirms that "New Charter will not have [the] incentive to foreclose OVDs and other vertically related providers."[126] The concerns raised by opponents of the Comcast/Time Warner Cable transaction have no relevance here. "Unlike Comcast," she explains, "New Charter will not own substantial interests in nationwide broadcast and cable programming, while its technology is relatively inexpensive for both OVDs and consumers. Because it will not have substantial interests in these vertically related industries, New Charter will not have an incentive to foreclose firms in

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[122] *See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Petition to Deny of Netflix, Inc., Decl. of David S. Evans, ¶ 80 (Aug. 25, 2014) (switching costs include "[c]ancellation fees for service," noting that "[c]ustomers who have signed contracts may be subject to early termination fees").

[123] *See* Winfrey Decl. ¶ 9.

[124] *See Open Internet Order* ¶¶ 111-132.

[125] *See Applications of Comcast Corp., Time Warner Cable Inc., Charter Commc'ns, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Petition to Deny of DISH Network Corp., Exh. A (Decl. of Roger J. Lynch), MB Docket No. 14-57, ¶ 58 (Aug. 25, 2014) ("[Time Warner Cable] has invested in a variety of partnerships that enable customers to access to the company's content through a number of OTT devices.").

[126] Dr. Scott Morton Decl. ¶ 36.

those industries from access to its subscribers. For example, because New Charter will not have an interest in the production of nationwide video programming, it will not have an incentive to prevent rival networks or OVDs from being distributed to its subscribers in order to favor its own video programming."[127]

To the contrary, we will have an increased incentive to promote OVDs and other edge providers in order to encourage usage that expands subscribership to our broadband network. Our gross margin percentages on broadband will exceed those on our video business.[128] And OVDs are the primary driver of broadband usage.[129] As Dr. Scott Morton explains, our future success depends far more on our broadband business than our video business, and thus we will not have any incentive to take any action that harms the attractiveness of broadband to our consumers.[130] Even as robust competition and consumer demand have driven each Applicant to invest many billions of dollars to expand and upgrade their broadband networks, the profitability of each Applicant's video business has declined significantly in recent years—a trend that is expected to continue, in light of video programming costs that have increased at a rate that far exceeds the growth in MVPDs' revenues.[131] Thus, as the profitability of our own video offering continues to face pressure, we will have even greater incentives to further expand and improve our broadband product. Efforts to foreclose OVDs would only harm these efforts and would make no business sense.

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[127] Dr. Scott Morton Decl. ¶ 36 (footnote omitted).

[128] Dr. Scott Morton Decl. ¶ 43.

[129] *See Open Internet Order* ¶ 197 n.490 (noting that "video is the dominant form of traffic on the Internet," and that it requires "significant bandwidth" to be viewed properly).

[130] Dr. Scott Morton Decl. ¶¶ 57-61.

[131] Tony Lenoir & Chris Young, *Programming Cost Increases Decelerate in 2014, But Steep Hikes Lie Around the Corner*, SNL Kagan, (Mar. 11, 2015) ("Video rate increases have failed to keep up with programming-cost inflation for years. In 2014, it cost the listed MVPDs an average $42 per month to program a video subscriber, up 7.6% from $39.03 in 2013 and up 16.5% from $36.04 in 2012. In comparison, combined video revenues for the group grew 3.3% to $87.08 in 2014. In the last two years, the metric grew 7.6%. As a result, video margins have compressed over the last several years and are expected to continue declining.").

Nor will New Charter's limited programming interests provide any incentive to harm OVDs. Charter and Bright House Networks own no programming interests outside of local news, sports and public affairs channels.[132] Time Warner Cable operates 50 local news, sports, and lifestyle channels, 13 of which include enough Division I college sports events to be covered by the "RSN" definition and two of which carry some Spanish-language broadcasts of Major League Baseball games, as well as two RSNs that carry the Los Angeles Lakers and other sports programming.[133] And while Time Warner Cable possesses minority interests in the iN Demand programming network, MLB Network, and SportsNet New York, New Charter will lack controlling interests in those networks.[134] Accordingly, we will have no content that we could seek to protect from competition from OVDs.

Indeed, New Charter's lack of incentive to impede the video distribution marketplace and harm OVDs is evidenced by Charter's actions.[135] Unlike some other providers, Charter does not impose data caps or usage-based billing on its broadband customers.[136] Thus, Charter's competitive strategy depends on its ability to support online video delivery. Charter also has a track record of investing its own resources in interconnection infrastructure in order to reliably

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[132] Bright House Networks owns and operates Bay News 9 (Florida), Central Florida News 13 (Florida), and InfoMás (Florida, Spanish language). In addition, Bright House Networks owns and operates Bright House Networks Sports Network (Florida), which features local high school sports (*i.e.*, no college or professional sports), and a minority attributable interest in the iN Demand programming service.

[133] Time Warner Cable's RSNs carrying professional sports are Time Warner Cable Channel 858 (California-Nevada, Spanish language), Time Warner Cable Deportes (California-Nevada, Spanish language), Time Warner Cable SportsNet (California-Nevada), and Canal de Tejas (Texas, Spanish language).

[134] Time Warner Cable also owns attributable interests in Nippon Golden Network Inc. (Hawaii) and NGN Hotel Channels (Hawaii), and provides affiliate sales, ad sales, and certain production and technical services to SportsNet LA.

[135] *See Dish Petition to Deny:* Sappington Declaration, ¶ 77 (rejecting Comcast's suggestion that "its recent track record provides little cause for alarm," observing that, instead, "Comcast's recent interactions with Netflix have generated considerable consternation").

[136] *See* Winfrey Decl. ¶ 9.

deliver data-hungry content.[137] In addition, as Dr. Scott Morton notes, "[a] credible signal of the post-merger firm's strategy to enhance entry of OVDs is therefore its investment in broadband speed."[138] She adds that "[t]he primary rationale for such speed increases is to *facilitate* use of streaming video services."[139]

Charter's record and that of the other Applicants prove that they have embraced a business model premised on promoting rather than discouraging the development of online content and distribution models. For example, Charter's CEO—who will also lead New Charter—recently stated:

> I don't think that most cable operators, particularly us, [a] non-vertically integrated operator, have any ambition to thwart any over-the-top business. But in fact, there's a lot of value in over-the-top business plans in terms of the way we look at the business. We have this broadband business which—our minimum speed that we go to market with is 60 megabits. Some markets, it's 100 megabits, and it may be 100 megabits everywhere in the relatively near future. That speed is highly capable for any household on multiple devices to have a very high-quality video service, no matter where that video originates. So the fundamental products that we sell, even at the lowest level we sell them, are beneficial to over-the-top providers.[140]

Moreover, competitive pressures also will drive us to integrate and expand OVD services into our offerings. DISH recently announced a deal to enable access to Netflix directly from its set-top boxes.[141] Such integration of OVD services creates a competitive advantage and will provide even more incentive for us to provide our customers with access to OVD services.

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137 *See* Winfrey Decl. ¶ 10.

138 Dr. Scott Morton Decl. ¶ 26.

139 *Id.*

140 Interview with Thomas M. Rutledge, President, Chief Executive Officer, & Director, Charter Communications, Inc., MoffettNathanson Media & Communications Summit in N.Y.C., N.Y. (May 13, 2015).

141 *See* DISH, *Netflix*, http://www.dish.com/netflix/ (last accessed June 23, 2015).

2. New Charter Will Have Neither The Incentive Nor Ability To Harm Competition With Other MVPDs.

New Charter will also have no incentive or ability to harm competition with other MVPDs.[142] As discussed above, New Charter will not be a significant owner of content, and the programming controlled by the merging entities is limited to various local and regional networks.[143] Because we will own so little programming, and so much of that will be local and regional, the concerns the Commission has previously expressed regarding vertical integration of video programming and MVPD distribution are not relevant here. Nor will Liberty Broadband, Advance/Newhouse, or their affiliates' programming interests influence New Charter's programming decisions.

a. Time Warner Cable's RSNs Do Not Pose Competitive Problems.

Time Warner Cable's limited number of RSNs does not pose any competitive problems. Time Warner Cable has made clear that it seeks the broadest possible distribution of those networks—the significant cost of acquiring the distribution rights compel that strategy as an economic matter. Indeed, in its efforts to secure distribution deals for SportsNet LA, Time Warner Cable has publicly offered to submit to binding arbitration with DirecTV or other distributors.[144] Moreover, the Commission's program access rules require programmers affiliated with cable operators to provide competing MVPDs with access to affiliated programming on a nondiscriminatory basis. Any MVPD that believes it has been improperly

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142 In past transactions, the Commission has expressed concern that a vertically integrated MVPD might seek to harm rival MVPDs by foreclosing access to its valuable programming. *See, e.g.*, *Comcast-NBCU Order*, 26 FCC Rcd at 4250-51 ¶ 29.

143 *See* discussion *supra* notes 131-134.

144 Joe Flint & Mike Hiserman, *Time Warner Cable Says Yes to Arbitration To End Dodgers TV Standoff*, L.A. Times (July 28, 2014), http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-dodgers-time-warner-cable-arbitration-20140728-story.html.

denied access, or has been granted access only on improperly unfavorable terms, can seek relief from the Commission.[145]

b. Liberty Broadband And Advance/Newhouse Affiliated Programming Interests Will Not Influence New Charter's Programming Decisions.

Finally, the minority interests held by Liberty Broadband and Advance/Newhouse in New Charter will not impact Charter's programming decisions. New Charter will have no economic interest in Liberty Broadband, Advance/Newhouse, or any of those two entities' affiliates. New Charter therefore will have no financial interest in the success of programming affiliated with those entities. And neither Liberty Broadband nor Advance/Newhouse will have the ability to cause New Charter to take actions that conflict with New Charter's best interests.[146] When taking into account its proxy from Advance/Newhouse, Liberty Broadband will have the right to vote up to 25.01% of the stock of New Charter and will have an approximately 18% to 19% economic interest in New Charter. That represents a *decrease* from Liberty's current 25.7% voting and equity interest in Charter. Advance/Newhouse will own approximately 13% of New Charter, which will be subject to the voting proxy of up to 7% provided to Liberty Broadband.[147] At these levels, Liberty Broadband will have the right to nominate up to three directors and Advance/Newhouse will have the right to nominate up to two directors of New Charter's 13-member Board of Directors. Accordingly, a majority of shareholders and of the Board of Directors will be independent of Liberty Broadband and Advance/Newhouse.

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[145] 47 C.F.R. § 76.1001(b)(1)(ii), (b)(2).

[146] Additionally, particularly given the limited nature and quantity of programming affiliated with Liberty Broadband and Advance/Newhouse, neither has any incentive to take actions that conflict with New Charter's best interests.

[147] Because of Liberty Broadband's proxy, Advance/Newhouse is expected to hold a voting interest in Charter of less than 10%.

Moreover, there are a number of specific precautions in place to further ensure that Liberty Broadband and Advance/Newhouse cannot improperly influence New Charter. First, Liberty Broadband's equity interests in New Charter cannot exceed a cap of 26% initially, and then a cap of 35% in certain circumstances where Advance/Newhouse has permanently reduced its New Charter ownership percentage. Second, programming-related transactions involving either Advance/Newhouse or Liberty Broadband, or any of their respective affiliates, require the approval of a majority of "unaffiliated directors" (*i.e.*, approval of at least four of the seven directors that are not Tom Rutledge and are unaffiliated with Liberty Broadband or Advance/Newhouse). Third, a majority of the directors on the Nominating, Corporate Governance, and Compensation and Benefits Committees will be unaffiliated directors. Fourth, any transactions likely to exceed $100,000 in any calendar year in which either Liberty Broadband or Advance/Newhouse has a direct or indirect interest must be approved by the Audit Committee, all members of which are independent outside directors.[148] Thus, there will be no ability for Liberty Broadband or Advance/Newhouse to improperly influence New Charter's decision-making process.

C. The Transaction Will Not Harm The Purchase Or Carriage Of Unaffiliated Programming

The Transaction similarly threatens no harms to video programming acquisition.

1. The Transaction Will Not Harm The Market For Purchases Of Unaffiliated Video Programming.

The merged entities' combined share of MVPD subscribers will be far too small to trigger any monopsony concerns.[149] New Charter will purchase video programming on behalf

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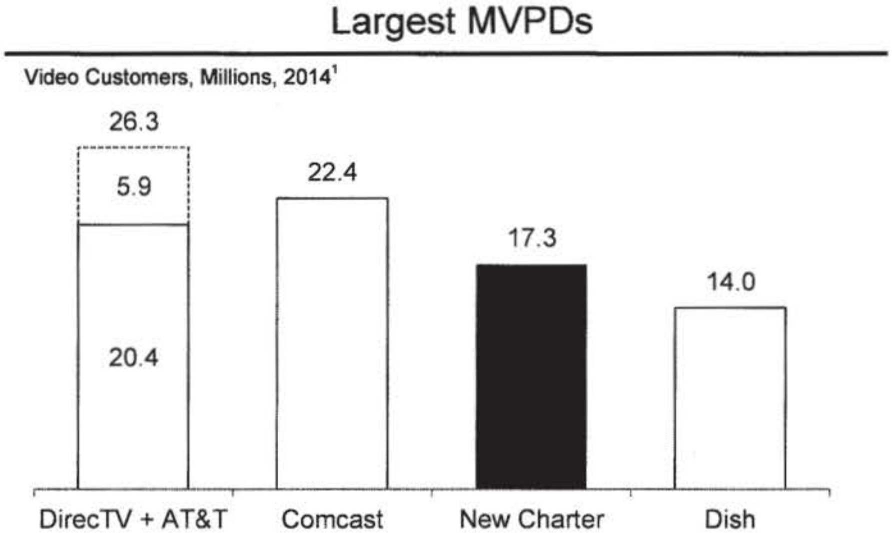
[148] *See* 15 U.S.C. § 78j-1(m) (Sarbanes-Oxley Act of 2002, § 301, requiring audit committees of public companies to consist of only independent directors).

[149] To be clear, the upstream market for the purchase of video programming is distinct from the downstream market in which consumers purchase video services from MVPDs and other providers. The fact that the upstream market

of 17.3 million video subscribers, or 17% of MVPD subscribers nationwide.[150] New Charter will be the third-largest MVPD, following well behind Comcast (with a 22% share), and even farther behind a combined AT&T and DirecTV (with a 26% share)—or even DirecTV today (with a 20% share).[151]



1) All company data based on respective company reporting methodologies, including commercial customers.

The Comcast-Time Warner Cable merger, by contrast, would have created a far larger MVPD serving approximately 30% of MVPD subscribers—nearly twice as large as New Charter will be following the Transaction.[152]

for the purchase of video programming may be national in some respects does not mean that the same is true of the downstream market in which consumers purchase video services.

150 There were approximately 101 million MVPD subscribers nationwide in 2013. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3256 ¶ 2 (2015) ("*Sixteenth Report*").

151 *See* Description of Transaction, Public Interest Showing, and Related Demonstrations, *Application of AT&T Inc. and DirecTV for Consent to Assign Transfer of Control of Licenses and Authorizations*, MB Docket 14-90, at 2, 13 (June 11, 2014) (total of 26.3 million video subscribers between AT&T and DirecTV); Comcast Corp., Annual Report (Form 10-K), at 3 (2014) (22.4 million Comcast video subscribers); DirecTV, Annual Report (Form 10-K), at 3 (2014) (20.4 million video subscribers).

152 *See* Applications and Public Interest Statement, *Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, at 7, 8, 14 (Apr. 8, 2014)

New Charter's modest size will not cause competitive harm in the national market for video programming acquisition. To begin with, the D.C. Circuit's decisions invalidating the Commission's horizontal cable ownership cap establish that there is no harm here. In 2001, the D.C. Circuit remanded the Commission's 30% cap, explaining that the record did not support a monopsony-based ownership cap of less than 60%.[153] When the Commission readopted the same 30% cap,[154] the D.C. Circuit on appeal again vacated the cap in 2009.[155] Noting record evidence of "ever increasing competition among video providers," the court concluded that the Commission's "justification for the 30% cap is even weaker now than in 2001."[156]

Even under that vacated cap, however, this transaction would not raise an issue. New Charter's 17% reach would be, of course, only about *half* the 30% horizontal video ownership cap that the D.C. Circuit vacated in 2009. And since then, competition in the market to purchase video programming has become only more vibrant. Not only has DBS subscribership increased, but telcos have emerged as robust competitors as well.[157] Significantly, because Applicants do not compete for video subscribers, content owners will have the same distribution options in any given area with New Charter that exist today with Charter, Time Warner Cable, and Bright House Networks. Accordingly, the Transaction will not result in any reduction in competition for video programming.

(total of 33.1 million video subscribers between Comcast and Time Warner Cable, less divestitures of systems with 3 million subscribers, and without Bright House Networks).

153 *See Time Warner Cable Entm't Co., L.P. v. FCC*, 240 F.3d 1126, 1136 (D.C. Cir. 2001).

154 *The Commission's Cable Horizontal and Vertical Ownership Limits,* Fourth Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 2134, 2143 (2008).

155 *Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009).

156 *Id.* at 8-9.

157 *Compare Sixteenth Report*, 30 FCC Rcd at 3262-64 ¶¶ 26-27 (2015), *with Thirteenth Report*, 24 FCC Rcd at 684, App. B, tbl. B-1 (2009).

Further, recent years have seen the rise of online video services operated by Hulu, Apple, Amazon, Netflix, and others.[158] As the Commission explained in its most recent video competition report, "OVDs are constantly entering and exiting the marketplace and changing the services and programming they offer, in response to viewer demand as well as external factors, such as the ability to access content and reach customers."[159] Because video programmers have an increasing diversity of outlets for distribution of their programming, video distributors cannot pass up available high-quality programming without running the risk that viewers will switch to a competing platform. Indeed, the Transaction is unlikely to materially enhance New Charter's bargaining power in negotiations for video programming as compared to Time Warner Cable. To the contrary, programmers have significant bargaining power, as reflected in the fact that programming costs routinely have outstripped video revenue gains.[160] Likewise, Applicants have reaped consistently lower profit margins from their respective video businesses in recent years.[161]

The Transaction will cause no harm to video programming markets at the local or regional level either. Because the merging entities generally do not serve the same areas within DMAs, the Transaction will result in no reduction in the number of potential purchasers of video programming for distribution to consumers. At the regional level, we will continue to face the programming demands of our MVPD subscribers—and the threat of losing subscribers to competitors, should we fail to carry their preferred programming or fail to offer our service at

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158 *See generally Sixteenth Report*, 30 FCC Rcd at 3353-65 ¶¶ 216-41.

159 *Id.* at 3377 ¶ 268.

160 Tony Lenoir & Chris Young, *Programming Cost Increases Decelerate in 2014, But Steep Hikes Lie Around the Corner*, SNL Kagan (Mar. 11, 2015).

161 *See* Winfrey Decl. ¶ 6.

competitive prices.[162] Competition for video programming thus will remain equally robust on local and regional levels, as well.

The absence of competitive harm is underscored by the fact that television programming is a non-rivalrous good—*i.e.*, its sale to one purchaser does not reduce the amount available for sale to another purchaser.[163] Distributors normally license video programming to multiple MVPDs, rather than licensing it on an exclusive basis.[164] Furthermore, because the three merged entities' footprints generally do not overlap—and therefore do not compete for the same customers—the purchase of video programming by one entity does not reduce the other's demand. Thus, although all three Applicants currently participate in the market for video programming, they do not actually compete against each other in that market. It follows that the Transaction will not *reduce* competition in that market for video programming.

2. The Transaction Will Not Harm The Market For Carriage Of Unaffiliated Video Programming.

We will also lack the incentive and ability to harm unaffiliated video programmers by favoring our own programming over programming distributed by other entities.[165] At the national level, New Charter will have neither the incentive nor the ability to disfavor programming distributed by other entities. New Charter will lack the incentive to do so because the programming that New Charter will control is local and regional and does not compete with

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162 In addition to the two DBS providers, other MVPDs compete for subscribers in various areas throughout New Charter's footprint—and OVDs offer still other video options.

163 *See* David Waterman, *Local Monopsony and Free Riders*, 8 J. INFO. ECON. & POL'Y 337, 339 (Dec. 1996) (noting that "programs can be electronically distributed by satellite to additional cable systems by little more than the flip of a switch"); *see also Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992*, Further Notice of Proposed Rulemaking, 16 FCC Rcd 17,312, 17,323 ¶ 15 (2002) (explaining that "[c]onsumption of the programming of a video programming network . . . by one viewer does not reduce the amount of the good available for another viewer")

164 *See, e.g., MVPD Notice of Proposed Rulemaking*, 29 FCC Rcd at 16,025 ¶ 67.

165 *See, e.g., Comcast-NBCU Order*, 26 FCC Rcd at 4282-89 ¶¶ 110-124.

national programming. Excluding high-quality national programming would only leave us with a less appealing product to sell to our cable subscribers.[166]

Nor does New Charter have any incentive to discriminate in carriage of regional programming distributed by other entities. The programming owned by the Applicants consists of hyper-local news channels and a small number of RSNs.[167] The Commission has recognized that regional sports programming has "no readily acceptable close substitutes," because "sports fans believe that there is no good substitute for watching their local and/or favorite team play an important game."[168] Precisely *because* we have no such substitutes, we will have no incentive to disfavor the regional programming of others. And the Commission has recognized that local news channels generally do not raise competitive issues.[169]

D. Any Harms Analysis Must Take Into Consideration Existing And Emerging Competition In These Dynamic Industries.

Finally, any analysis of potential harms from the Transaction must account for the fact that the relevant industries are competitive and dynamic. Charter, Time Warner Cable, and Bright House Networks all face robust competition in the competitive and dynamic markets that they serve. In 2013, 99% of homes had access to at least three MVPDs, and 35% had access to

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166 The proposed Comcast-Time Warner Cable merger, by contrast, involved vertical integration with the NBC and Telemundo broadcast television networks (including seventeen owned-and-operated local stations), Bravo, CNBC, MSNBC, Oxygen, the USA Network, and Universal HD—just to name a few. *See* Applications and Public Interest Statement, *Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, at 12 (Apr. 8, 2014).

167 *See* Exh. G (listing Time Warner Cable programming interests).

168 *General Motors Corp. and Hughes Electronics Corp., Transferors and The News Corp. Ltd., Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473, 535 ¶ 133 (2004); *see Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, 782-83 ¶ 52 (2010) ("*2010 Program Access Order*"), *vacated in part by Cablevision Sys. Corp. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011).

169 *Revision of the Commission's Program Access Rules*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 27 FCC Rcd 12,605, 12,640-641 ¶ 53; (2012); *2010 Program Access Order*, 25 FCC Rcd at 781-82 ¶ 51 n.200.

at least four, up from 32% the previous year.[170] New Charter will face robust video competition in virtually 100% of its footprint from other MVPDs, including two DBS providers (one of which, if the AT&T-DirecTV merger is approved, will be the largest MVPD provider in the U.S.). And the video distribution marketplace continues to become more competitive, with cable losing market share both to well-established and new competitors.

The broadband marketplace is especially dynamic, with cable and telco-based competitors engaging in head-to-head competition throughout most of the U.S., new entry underway by Google fiber and other new wireline entrants, and rapid improvements in both terrestrial and satellite-based wireless competitors. For example, six of the eight DMAs that Google fiber has either entered or committed to enter, and three of the additional four cities it is actively considering, fall within New Charter's broadband service territories.[171] Telephone companies, in the meantime, are rapidly upgrading their networks using either advanced varieties of DSL technologies or fiber-to-the-home, with AT&T, CenturyLink, Frontier and Verizon all offering residential broadband plans with download speeds in excess of 100 Mbps. As noted above, as a result of this ongoing entry and innovation, more than one in three households in the New Charter footprint already had access to at least one wireline alternative (in addition to the merging firms) offering download speeds of 25 Mbps or faster.[172]

Competitive pressure from terrestrial and mobile wireless services is also intensifying. As the Commission has recognized, "[s]atellite broadband service has improved significantly, and many consumers today have high speeds, low prices, and generous data usage

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[170] *Sixteenth Report*, 30 FCC Rcd at 3267 ¶ 31 (2015).

[171] The current and committed Google fiber DMAs are Atlanta, GA; Austin, TX; Charlotte, NC; Kansas City, MO-KS; Nashville, TN; and, Raleigh-Durham (Fayetteville), NC. The potential DMAs are Portland, OR; San Antonio, TX; and San Francisco-Oakland-San Jose, CA. *See* Google, *Google fiber Expansion Plans*, https://fiber.google.com/newcities/ (last accessed June 23, 2015).

[172] *See* discussion *supra* note 6.

allowances,"[173] while all four national mobile wireless carriers (AT&T, Sprint, T-Mobile and Verizon) continue to rapidly improve their offerings by deploying ever-faster and more capacious LTE networks.[174] Thus, New Charter faces robust and rapidly increasing competition throughout its service territory.

VI. THE TRANSACTION IS CONSISTENT WITH THE COMMUNICATIONS ACT AND FCC RULES

In addition to advancing the public interest, the proposed transaction complies with both the Communications Act and all relevant Commission regulations. It will not implicate the Commission's radio/television cross-ownership rule, the local TV duopoly rule, the national TV broadcast audience cap, or the newspaper/broadcast cross-ownership prohibition. Nor will the Transaction implicate the cable/BRS or cable/SMATV cross-ownership restrictions, or the LEC buyout restriction. New Charter will continue to ensure its compliance with the channel occupancy rule, the program access rules, and other Commission rules following the Transaction.

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[173] *See 2015 Broadband Progress Report*, 30 FCC Rcd at 1446 ¶ 123; *see also* Comments of ViaSat, Inc., *Connect America Fund*, WC Docket Nos. 10-90, 14-259, at 3 (filed Jan. 6, 2015) (indicating ViaSat is deploying satellite services capable of speeds of 100/25 Mbps and higher).

[174] The Commission and DOJ have recognized that mobile broadband service is increasingly competing with wireline broadband. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Servs.*, Sixteenth Report, 28 FCC Rcd 3700, 3725 ¶ 2 (2013) ("Mobile wireless Internet access service could provide an alternative to wireline service for customers who are willing to trade speed for mobility, as well as customers who are relatively indifferent with regard to the attributes, performance, and pricing of mobile and fixed platforms."); *id.* at 3933 ¶ 371 ("[M]obile wireless providers have made substantial progress in upgrading their networks with higher-speed technologies and expanding coverage with these technologies. In some cases mobile broadband networks are being used as a replacement for wireline last-mile solutions, where location makes deployment of wireline facilities inefficient." (footnote omitted)); *Economic Issues in Broadband Competition: A National Broadband Plan for Our Future*, Ex Parte Submission of the U.S. Dep't of Justice, GN Docket No. 09-51, at 8 (Jan. 4, 2010) ("Wireless may be a very attractive alternative for consumers who greatly value mobility and for customers who do not place much value on the highest speeds (*e.g.*, consumers who do not want advanced services, such as HD video streaming). It appears to offer the most promising prospect for additional competition in areas where user density or other factors are likely to limit the construction of additional broadband wireline infrastructure.").

VII. PROCEDURAL MATTERS

Given the ongoing regulatory activity of the Applicants and their subsidiaries, including the possible need for those entities to file license applications with the Commission during the pendency of the Commission's review of the proposed transaction, the Applicants request that the Commission's grant of approval of the Transaction include, as appropriate: (1) any licenses and/or authorizations issued to the Applicants or any of their subsidiaries or affiliates during the Commission's review of the instant application and the period required for the consummation of the proposed transaction following approval; and (2) applications filed by the Applicants or their subsidiaries or affiliates that are pending at the time of the proposed transaction. Such action would be fully consistent with prior decisions of the Commission.[175]

VIII. CONCLUSION

For the foregoing reasons, approval of the Transaction will serve the public interest and the Commission should grant the applications expeditiously.

June 25, 2015

[175] *See, e.g., Comcast-NBCU Order*, 26 FCC Rcd at 4354 ¶ 291; *Adelphia Order*, 21 FCC Rcd at 8332 ¶ 312; *AT&T-MediaOne Order*, 15 FCC Rcd at 9895 ¶ 185; *Comcast-AT&T Broadband Order*, 17 FCC Rcd at 23,330-31 ¶ 224.

Charter Reorganization Licenses and Authorizations[1]

MEDIA BUREAU

CARS LICENSES		
LICENSEE	**FRN**	**CALL SIGN**
CC VIII Operating, LLC	0018767988	KQQ-26
CC VIII Operating, LLC	0002753168	WLY-689
CC VIII Operating, LLC	0002753168	WLY-669
Charter Cable Partners, LLC	0004542585	WLY-637
Bresnan Communications, LLC	0007001977	WHZ-634
Bresnan Communications, LLC	0007001977	WHZ-748
Bresnan Communications, LLC	0007001977	WLY-332
Bresnan Communications, LLC	0007001977	WLY-861
Bresnan Communications, LLC	0007001977	WLY-914
CCO SoCal I, LLC	0020921029	WAM-603
CCO SoCal I, LLC	0020921029	WAM-609
CCO SoCal I, LLC	0020921029	WHZ-899
CCO SoCal I, LLC	0020921029	WSA-52
CCO SoCal I, LLC	0020921029	WSJ-78
CCO SoCal I, LLC	0020921029	WGV-505
CCO SoCal I, LLC	0020921029	WHZ-511
CCO SoCal I, LLC	0020921029	WHZ-662
CCO SoCal I, LLC	0020921029	WHZ-764
CCO SoCal I, LLC	0020921029	WBW-21
Falcon Cable Systems Co. II, LP	0018767970	WHZ-856
Falcon Cable Systems Co. II, LP	0018767970	WHZ-645
Falcon Cable Systems Co. II, LP	0018767970	WLY-695
Falcon Telecable, a California Limited Partnership	0018768028	WHZ-632

[1] This list includes only those licenses and authorizations the transfer of which require advance approval from the Commission. Charter will provide notification of other licenses, authorizations, and registrations for which prior approval is not required following consummation of the transactions, as set forth in the Commission's rules.

Falcon Community Ventures I, LP	0018768218	WAY-753
Falcon Community Ventures I, LP	0018768218	WHZ-908
Falcon Community Ventures I, LP	0018768218	WLY-441
Falcon Community Ventures I, LP	0018768218	WLY-446
Falcon Video Communications, L.P.	0018768036	WGJ-868
Rifkin Acquisition Partners, LLC	0018769265	WGZ-305

WIRELESS TELECOMMUNICATIONS BUREAU

PRIVATE WIRELESS LICENSES			
LICENSEE	FRN	CALL SIGN	RADIO SERVICE
Charter Communications Operating, LLC	0002526580	WQRJ765	MG
Charter Communications Operating, LLC	0002526580	WQRJ767	MG
Charter Communications Operating, LLC	0002526580	WQRJ769	MG
Charter Communications Operating, LLC	0002526580	WQRJ774	MG
Charter Communications Operating, LLC	0002526580	WQRJ792	MG
Charter Communications Operating, LLC	0002526580	WQRJ793	MG
Charter Communications Operating, LLC	0002526580	WQRJ795	MG
Charter Communications Operating, LLC	0002526580	WQRJ799	MG
Charter Communications Operating, LLC	0002526580	WQRJ801	MG
Charter Communications Operating, LLC	0002526580	WQRJ804	MG
Charter Communications Operating, LLC	0002526580	WQRJ806	MG
Charter Communications Operating, LLC	0002526580	WQRJ807	MG
Charter Communications Operating, LLC	0002526580	WQRJ834	MG
Charter Communications Operating, LLC	0002526580	WQRJ836	MG
Bresnan Communications, LLC	0007001977	WNKK403	IG
Bresnan Communications, LLC	0007001977	WNKT802	IG
Bresnan Communications, LLC	0007001977	WNUX414	GJ
Bresnan Communications, LLC	0007001977	WQJQ805	WY
Bresnan Communications, LLC	0007001977	WQJQ806	WY
Bresnan Communications, LLC	0007001977	WQJQ807	WY

CC Michigan, LLC	0005099403	WQLA501	MG
CC Michigan, LLC	0005099403	WQLA845	MG
Charter Communications, LLC	0018767954	WQLA212	IG
Charter Communications, LLC	0018767954	KLP528	IG
CCO SoCal I, LLC	0020921029	WQKG921	MG
CCO SoCal I, LLC	0020921029	WQKG924	MG
Falcon Cable Systems Co. II, LP	0018767970	WQKG920	MG
Falcon Cable Systems Co. II, LP	0018767970	WQKG922	MG
Plattsburgh Cablevision Inc.	0018768754	KVE945	IG
Charter Communications, LLC	0002531093	WQTA660	MG
Charter Communications, LLC	0002531093	WQTA661	MG

INTERNATIONAL BUREAU

INTERNATIONAL SECTION 214 AUTHORIZATIONS		
AUTHORIZATION HOLDER	FRN	FILE NUMBER
CC Fiberlink, LLC	0007756869	ITC-214-20030127-00070
CCO Fiberlink, LLC	0014749063	ITC-214-20060309-00144
CCVII Fiberlink LLC	0014750327	ITC-214-20060309-00145
Charter Fiberlink CC VIII, LLC	0018372888	ITC-214-20090313-00122
Bresnan Digital Services, LLC	0015743123	ITC-214-20061117-00525

WIRELINE COMPETITION BUREAU

BLANKET DOMESTIC SECTION 214 AUTHORITY
Charter Fiberlink - Alabama, LLC
Charter Fiberlink CA-CCO, LLC
Bresnan Broadband of Colorado, LLC
Charter Fiberlink CT-CCO, LLC
Charter Fiberlink - Georgia, LLC

Charter Fiberlink - Illinois, LLC
Charter Fiberlink LA-CCO, LLC
Charter Fiberlink MA-CCO, LLC
Charter Fiberlink - Michigan, LLC
Charter Fiberlink CC VIII, LLC
Charter Fiberlink CCO, LLC
Charter Fiberlink CC VIII, LLC
Charter Fiberlink MS-CCVI, LLC
Charter Fiberlink - Missouri, LLC
Bresnan Broadband of Montana, LLC
Bresnan Digital Services, LLC
Charter Fiberlink - Nebraska, LLC
Charter Fiberlink NV-CCVII, LLC
Charter Fiberlink NH-CCO, LLC
Charter Fiberlink NY-CCO, LLC
Charter Fiberlink NC-CCO, LLC
Charter Fiberlink OR-CCVII, LLC
Charter Fiberlink SC-CCO, LLC
Charter Fiberlink - Tennessee, LLC
Charter Fiberlink TX-CCO, LLC
Bresnan Broadband of Utah, LLC
Charter Fiberlink VT-CCO, LLC
Charter Fiberlink VA-CCO, LLC
Charter Fiberlink WA-CCVII, LLC
Charter Fiberlink CCO, LLC
Charter Fiberlink CC VIII, LLC
Bresnan Broadband of Wyoming, LLC

Time Warner Cable to Charter Licenses and Authorizations

MEDIA BUREAU

CARS LICENSES		
LICENSEE	**FRN**	**CALL SIGN**
Oceanic Time Warner Cable LLC	0021520101	WAE-470
Oceanic Time Warner Cable LLC	0021520101	WAE-478
Oceanic Time Warner Cable LLC	0021520101	WAX-743
Oceanic Time Warner Cable LLC	0021520101	WBM-742
Oceanic Time Warner Cable LLC	0021520101	WBM-744
Oceanic Time Warner Cable LLC	0021520101	WLY-376
Oceanic Time Warner Cable LLC	0021520101	WLY-402
Oceanic Time Warner Cable LLC	0021520101	WLY-415
Oceanic Time Warner Cable LLC	0021520101	WLY-713
Time Warner Cable Pacific West LLC	0021520077	KB-60101
Time Warner Cable Pacific West LLC	0021520077	KD-55007
Time Warner Cable Pacific West LLC	0021520077	WAE-606
Time Warner Cable Pacific West LLC	0021520077	WHZ-293
Time Warner Cable Pacific West LLC	0021520077	WHZ-301
Time Warner Cable Pacific West LLC	0021520077	WLY-269
Time Warner Cable Pacific West LLC	0021520077	WLY-662
Time Warner Cable Pacific West LLC	0021520077	WLY-893
Time Warner Cable Pacific West LLC	0006329247	WSJ-903
Time Warner Cable Midwest LLC	0021519962	KD-55034
Time Warner Cable Texas LLC	0021552963	KD-55017
Time Warner Cable Texas LLC	0006329247	KA-80623
Time Warner Cable Northeast LLC	0021520002	KB-60127
Time Warner Cable Northeast LLC	0021520002	KD-55003
Time Warner Cable Northeast LLC	0021520002	KD-55027

Time Warner Cable Northeast LLC	0021520002	KD-55031
Time Warner Cable Northeast LLC	0021520002	WLY-609
Time Warner Cable Northeast LLC	0021520002	WLY-852
Time Warner Cable New York City LLC	0021520085	KD-55028
Time Warner Cable Southeast LLC	0021552922	KD-55024
Time Warner Cable Southeast LLC	0021552922	KD-55026
Time Warner Cable Southeast LLC	0021552922	WLY-235

WIRELESS TELECOMMUNICATIONS BUREAU

PRIVATE WIRELESS LICENSES			
LICENSEE	**FRN**	**CALL SIGN**	**RADIO SERVICE**
Time Warner Cable Enterprises LLC	0021624192	WQJU341	AC
Time Warner Cable Enterprises LLC	0021624192	WQPT943	AC
Time Warner Cable Enterprises LLC	0021624192	WQQZ908	IG
Time Warner Cable Enterprises LLC	0021624192	WQRT266	IG
Oceanic Time Warner Cable LLC	0021520101	WQQS791	MG
Oceanic Time Warner Cable LLC	0021520101	WQQW415	MG
Oceanic Time Warner Cable LLC	0021520101	WQRD688	MG
Oceanic Time Warner Cable LLC	0021520101	WQRD689	MG
Oceanic Time Warner Cable LLC	0021520101	WQRD690	MG
Oceanic Time Warner Cable LLC	0021520101	WQRD691	MG
Time Warner Cable Pacific West LLC	0021520077	KBL655	IG
Time Warner Cable Pacific West LLC	0021520077	WQTX480	MG
Time Warner Cable Pacific West LLC	0021520077	WQTX482	MG
Time Warner Cable Pacific West LLC	0021520077	WQTX483	MG
Time Warner Cable Pacific West LLC	0021520077	WQTX484	MG
Time Warner Cable Midwest LLC	0021519962	WPAJ330	IG